

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

vs.

JAMES C. CARTER

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) **Crim. No. 02-11 Erie**
)
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ORDER

James C. Carter has filed two copies of a "Motion for Transcription of Proceedings and Production of Documents and Orders Authenticated Per F.R.C.P., Rule #44 For Appeal Purposes," (Docs. 40 & 41). In his motion, Mr. Carter requests transcripts of his change of plea and sentence hearings as well as authenticated copies of various pleadings identified in the docket. In addition he requests "authentication" of 10 exhibits to his motion (Doc. 41). Nine of the exhibits are orders and documents issued by the United States Court of Appeals for the Third Circuit relating to Mr. Carter's appeal in that Court (No. 03-1385), and one letter from Mr. Carter's attorney notifying Mr. Carter of the Court of Appeals opinion affirming the district court's judgment with regard to Mr. Carter's case. (Ex. V.)

On October 15, 2002, Mr. Carter plead guilty to one count of distribution of less than five grams of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) & 841(b)(1)(C). He was sentenced by this Court on February 3, 2003, to a term of imprisonment of 151 months' imprisonment to be served concurrently with any state term of imprisonment imposed for violating his state parole. (Doc. 26) Mr. Carter timely appealed his sentence on February 7, 2003. (Doc. 27). Transcripts of the change of plea hearing and sentencing were ordered, produced, and made a part of the record. (See Doc. 29, 30, 31, & 32.)

A review of the docket sheet indicates that after his unsuccessful appeal, Mr. Carter filed a writ of certiorari in the Supreme Court of the United States on June 21, 2004, which was denied. (Docs. 34 & 35.) Mr. Carter's petition for rehearing in the Supreme Court was also denied. (Doc. 36.) Nonetheless, Mr. Carter sought to appeal this Court's Order date March 17, 2003, denying his

petition for sentence modification. (Doc. 37). This appeal was dismissed as untimely on May 17, 2005.) (Doc. 39).

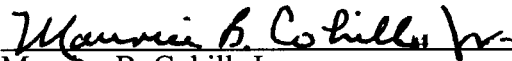
Our March 17, 2003 Order was entered in response to Mr. Carter's letter sent to this Court while his appeal was pending. In his letter which we viewed as a petition for modification of sentence, Mr. Carter requested that his petition be "retracted" if it interferes with an appeal of his sentence. Since his appeal was currently pending we were without jurisdiction to entertain his petition and thus denied his petition.

Mr. Carter does not provide any valid basis for his requests. He bases his motion on Federal Rule of Civil Procedure 44 entitled "Proof of Official Record." This rule merely explains how a record may be authenticated; it does not provide for a right to authentication of a record.

Mr. Carter also argues that his motion should be granted "so as not to further prejudice Appellants right to an appellate review." However, as noted Mr. Carter has already received appellate review. In any event, there is no basis for granting Mr. Carter's motion. In light of Mr. Carter's prior appeals we find the present motion frivolous. Insofar as this motion represents a prelude to another appeal we find that any appeal based on this motion would likewise be frivolous.

The following Order is therefore entered.

AND NOW, this 26th day of July 2005, it is HEREBY ORDERED, ADJUDGED, and DECREED that defendant's Motion for Transcription of Proceedings and Production of Documents and Orders Authenticated Per F.R.C.P., Rule #44 For Appeal Purposes, (Doc. __) be and hereby is DENIED.


Maurice B. Cohill, Jr.
Senior United States District Judge

cc: JAMES C. CARTER (by regular mail)
counsel of record (by electronic mail)